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# VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS

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We are very sure that the readers of Dr. Clark's address, which we publish as our leading article in this number, will be as much pleased with the perusal of it

**Dr. J. Murray Clark.** as we are with the opportunity to publish it.

Honorable J. Murray Clark, K.C., LLB. LLD., is a prominent lawyer of Toronto, Canada. He has been engaged in the leading cases in the courts of both Canada and England, and is President of the Royal Canadian Institute, one of the highest civilian honors in the gift of the Canadian people. It is always held by a man whose reputation has been made in both letters and law. He has lectured on special legal and philosophical subjects at McGill University, at Montreal, and at Harvard. He is often called into conference by the Government, though he has always declined political preferment. He is a royal and outspoken friend of the United States and is a strong favorite with the American Bar Association. Dr. Clark numbers among his friends all the leading statesmen of England.

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The meeting of our State Bar Association was held in Richmond on Tuesday May 11th, 1920. There was an excellent attendance thus proving the wisdom of

**The 1920 Meeting of** holding the sessions in our Capitol  
**the Virginia State Bar City.**

**Association.** The meeting was called to order by Norvell L. Henley, Chairman of the Executive Committee, and after prayer Mr. Henley introduced Mr. Randolph Harrison, the President of the Association, who delivered the annual address, taking as his subject "The Monroe Doctrine; Its Origin, etc., etc."

Mr. Harrison discussed in detail the origin, the meaning and the application of the doctrine promulgated by President Monroe as the policy of this country in the matter of international relations and in the matter of keeping the American continents free from any sort of European domination. He quoted liberally from Washington, Jefferson and Madison to show that Monroe's action reflected the views of the founders of the republic that the United States in that day should remain aloof from the settlement of affairs which concerned only Europe.

After discussing briefly the proposed change in the application of the doctrine, as set out in the treaty of peace, Mr. Harrison concluded:

"Thus the issue sharply raised is, whether or not, on the one hand, the Monroe Doctrine is to lose its identity as an American policy and be swallowed up in a world-wide doctrine, establishing the inviolable right of self-determination for all nations, great and small, as President Wilson suggests, or, on the other hand, whether or not it is to be maintained in its integrity as the fundamental principle of our foreign policy. This is a question of supreme importance to the people of the United States, and it should be decided, not according to the demands of party expediency, but the dictates of patriotism. Let us hope that those upon whom rests the responsibility of decision will have the courage to meet the issue uninfluenced by any consideration save that of the welfare of our country."

In which hope we are satisfied all patriotic citizens will unite.

The reports of various committees were then submitted and after adjournment members of the Association were taken on automobile trips about the City, the ladies of the party being entertained by members of the Woman's Club. The prominent social feature of the occasion was a buffet supper at the beautiful Country Club tendered by members of the Richmond Bar Association. Mesdames Randolph Harrison, Henley, Minor, Peyton, Pollard, Cary, Cutchins, Welford and Page were in the receiving line.

On Wednesday the important question of the "Practice of Law by Corporations" was discussed at some length. That this is highly reprehensible and should be checked by law as is done in New York, it seems to us no one can question. It is to be

hoped that by continued agitation this practice may be stopped.

Senator Pomerene of Ohio delivered the address on Wednesday. It was most enthusiastically received and a bold and eloquent discussion of the transportation problems of today. He discussed strikes and lockouts and predicted that the American people would stand up to a certain point their tyrannical and outrageous attacks on the peace and welfare of the Country, but would in the end arise and forever end them.

He paid a high tribute to the late Senator Thos. S. Martin, "a pillar of strength in the Council of the Nation."

The following officers were elected: President, A. C. Gordon, Staunton; vice-presidents (one from each grand division of the State): Southwest, Judge F. B. Hutton, of Abingdon; South-side, E. P. Buford, Lawrenceville; Tidewater, Frank Armstead, Williamsburg; Piedmont, V. R. Shackelford, Orange; Valley, R. T. Burton, Winchester; secretary and treasurer, John B. Minor, Richmond, and two members of the executive committee, to serve three years, John B. Lightfoot, Richmond, and W. W. Old, Norfolk.

On Thursday morning Vice-President Thos. R. Marshall delivered an address which had for its keynote a Return to the Constitution. To many who have followed the career of this modest, yet able and patriotic citizen and statesman, comes the hope that through some happy good fortune he may be selected as the leader of the Democratic party and elevated to the Presidency. No man yet mentioned would fill that exalted position better and there would be a Democrat without "isms" or "fads" in the Presidential Chair and one who would be worthy indeed of the grander days of the fathers.

We cannot forbear giving some extracts from his able address.

He made it clear at the outset that whatever he might say should not be construed even in the slightest degree as a criticism of President Wilson or his administration. The President, he declared, has done as well as any man could have done at the difficult post he has held for the last seven years, and his name will be written high upon the scroll of those who have wrought mightily for his country and for the world.

Though the Vice-President believes the eighteenth amendment

to the Federal Constitution is absolutely opposed to the principle of local self-government and States' rights, he said that amendment, as a part of the fundamental law of the land, should be upheld by all law-abiding citizens.

"I don't see," he declared, "that Washington has any right to dictate the morals of Virginia. It seems to me that every State is abundantly able to take care of itself, and none should impose its will in a matter of this sort on any other. I am a teetotaler, too. But this is one of the 'altruistic evils' that the country has been heir to through the years. Those behind the movements probably have the best of motives, but their work, to my mind, is not for the good of the country. So far as I am concerned, I pray God that no man will ever again take a drink of intoxicating liquor, but the States should handle this question, rather than for Washington to legislate for the morals of the nation. If a secret vote had been taken on that amendment behind closed doors, it wouldn't have received twenty votes in the United States Senate."

Mr. Marshall explained that he is an old-fashioned, dyed-in-the-wool, local self-government, predestination Presbyterian Democrat, bottled in bond and guaranteed to be pure, and that his views are but reflections of the faith that is in him.

The Vice-President declared that it should be remembered always that this is a representative and not a pure democracy. He illustrated his views against too much meddling in governmental affairs by laymen and organizations in this way:

"I am sick. I go to the doctor, and he tells me that I have appendicitis. Do you think I should refer my course of action to the plumbers' union, because these men, perhaps, know more about pipes than the surgeon? Not a bit of it. I would say, 'Go ahead, doctor, and take the vice-presidency from my anatomy.'"

Mr. Marshall apologized for his one-time belief in the election of United States Senators by direct vote of the people.

"I was strong for this amendment," he said, "but I was wrong. It is another altruistic evil. I don't believe it is the least improvement over the old idea. Haven't we seen the spectacle of a man spending \$500,000 in one State to secure the election?"

The Vice-President said this must be a government of men

or of laws, and that for his part he will stand and fall for a government of laws. The legal profession, he declared, is not wielding the influence in the nation's affairs that it once did.

"Instead of referring the problems of the country to you," he told the lawyers, "Samuel Gompers and Gary are now called in to settle them."

The matter of breaking up trusts, Mr. Marshall believes, can be easily accomplished by the individual States.

"Suppose a bank, chartered under the laws of the State of Virginia," he asked, "should be found operating a garage by the back way, in addition to the specific privilege granted it under the articles of incorporation, couldn't you revoke that privilege at once and call the bank to account? Then why not handle the trusts the same way? When they violate the privileges you have granted them take away their charters."

The Vice-President brought prolonged laughter when he referred to the United States Senate as a "cave of wind," saying that Mr. Harrison called on him in his office adjoining the "cave" to ask that he address the Bar Association.

"I told Mr. Harrison," he said, "that I would be too busy to prepare a speech. I was bluffing, for I knew perfectly well that if I haven't time I haven't anything. But Mr. Harrison called my bluff. He answered at once that he was aware that under the Constitution the Vice-President is charged with the performance of many burdensome tasks of state and that, under the circumstances, the association would not expect me to make a speech, but just talk. He would make a dangerous man in a poker game."

Mr. Marshall said his grandfather lived in the County of Bedford, Virginia, and that he is kin to all the Marshalls in that section who haven't gone to the penitentiary or voted the Republican ticket.

Mr. Marshall ridiculed the altruism of the referendum and recall by telling of a visit he made Seattle, Washington.

"In Seattle," he said, "they had apparently set up ballot-boxes in place of saloons. Instead of taking a drink as they went down town, residents of Seattle stopped on the corner and dutifully cast a ballot. They told me of the plan and asked my

opinion. I told them it might be all right, but I thought they should have two mayors, in order that one might serve while the other was being recalled."

He scored the fourteenth and fifteenth amendments to the Federal Constitution, in addition to the eighteenth.

We only wish this address could be read by every voter in these United States.

The meeting closed with the annual banquet Thursday night. Ginger ale and grape juice flowed like water. There is no mention of the post prandial addresses in any of the journals and the Editor-in-Chief can give no account of them. He has too much respect for his organs of digestion to attend banquets now, under the "dry régime" and has not attended a "banquet" since "aridness" has been made by law "the rule of conduct."

"Ἐστιν ὁδῶρ Ψυχὴ Θάραρος" \* said the old Greek: Surely water and "soft" drinks must be death to oratory at any banquet.

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The well considered opinion handed down by our new Supreme Court Judge Saunders in the case of *Elliott v. Birrell* (March

Term, 1920) is one of exceeding importance. **Tenancy from** to the profession and settles a question that **Year to Year.** has long been one of great uncertainty in this

State. The facts of the case are that on the 15th day of April, 1916, one Julian N. Major, who was the owner of lots No. 11 and 12 in a subdivision of Cottage Park, Alexandria County, Virginia, leased the same to one Birrell, to be used by him as his dwelling, at a monthly rental of twenty-five dollars per month; nothing being said or agreed as to the length of term, the defendant simply agreeing to take the property and pay \$25.00 per month. Subsequently one Kate Elliott purchased the property and has since the time of her purchase and up to some time during the spring of 1919 received the monthly rent from the defendant, who, as will be seen, had held over for nearly three years. Kate Elliott gave one month's proper and legal notice to the defendant to quit and deliver up the premises, and upon Birrell's refusal so to do, got out a war-

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\*Water is death to the soul.

rant of unlawful detainer, which was tried before a justice of the peace for Alexandria County, who gave judgment for the plaintiff. The defendant appealed to the circuit court of Alexandria County, which reversed the justice and held that Birrell was a tenant from year to year. Our Supreme Court unanimously reverses this decision, and in an opinion carefully considering the whole question and quoting numerous authorities, holds that the periodic estate established by the contract of the parties in the instant case was a tenancy from month to month and not from year to year. It will be noted in this case that there was no agreement between the parties as to the length of term, that the lands are urban property in Alexandria County, and that the lands were demised to the defendant to be used by him as his dwelling, at a monthly rental of twenty-five dollars. The case decided is one of first impression in this State.

The Court says: "Where a landlord allows a tenant for a term of years to hold over after the expiration of his term, the one paying and the other receiving the rent promptly paid, without any new agreement, the tenant becomes a tenant from year to year. *Pierce v. Grice*, 92 Va. 767 and cases cited. But this does not mean that every lessee holding over is entitled to hold for another year. The preceding estate may have been one of years but for a less period than a year. This fact may determine the extent of the ensuing periodic estate."

"'If a landlord elect to treat one holding over as a tenant, he thereby affirms the form of tenancy under which the tenant previously held. If that was a tenancy by the month it will presumptively so continue. The implied renewal of a lease assumes a continuation of its characteristic features.' *Hollis v. Burns*, 100 Pac. 209.

"In *Branton v. O'Briant*, 93 N. C. 99, this instruction was approved: 'If the plaintiff rented a house at five dollars per month and held over several months, paying the same rent without a new agreement, she would be a tenant from month to month.' . . . .

"In Minor's Real Property, Section 390, and 2 Minor's Institutions, p. 200, it is stated that, 'every general letting, if the lessor accepts yearly rent or rent measured by an aliquot part

of a year, if not expressed to be an estate at will, is an estate from year to year.' If this statement is of universal and inflexible application, then every letting for an indefinite time, whether the rent is to be paid yearly, half yearly, every three months, or each month, will be a tenancy from year to year, without regard to the character of the property leased, whether urban or agricultural, or to other pregnant circumstances.

"The statement in Graves, Real Property, sec. 67, is that if 'under agreement for a lease, the tenant enters and pays an annual rent, or rent with reference to a year, he becomes a tenant from year to year.' The propriety of the conclusion, that a tenant for an indefinite time who agrees to pay a yearly, or half-yearly rent becomes a tenant from year to year, is admitted. The agreement with respect to the payment of the rent yearly, or half-yearly, in the absence of other and more controlling circumstances, justifies the conclusion that the parties are contracting for a yearly period. But is this conclusion so apparent when the agreement for the rent contemplates a monthly payment? A month is an aliquot part of a year, but it is also a definite period of time with respect to which contracts are made. An agreement that the rent contracted for shall be paid by the month, if not controlled by other features of the case, is consistent with the conclusion that the parties have in mind a tenancy by the month. This distinction is evidently in the mind of the following writer: 'Where the letting is by the month indefinitely, and not as for an aliquot part of a year, the tenancy is from quarter to quarter, month to month, etc.' Taylor, Landlord & Tenant, sec. 57.

"In each given case, the contract between the parties, construed in the light of all the facts, must determine the tenancy, and fix the respective rights of the lessor and lessee.

"As a general proposition, 'every occupation of land is *prima facie* a tenancy from year to year, yet it may be shown to be any other tenancy.' *Humphries v. Humphries*, 3 Ired. 363."

The importance of this decision must be apparent to any Virginia lawyer who has been consulted frequently in regard to the notice given, where a tenancy has been for an indefinite period, and we think will settle in the clearest way the mooted question of what is a tenancy from year to year, or from month to month.

Our brief mention of the amendments to the Code of 1919 by the last Legislature stopped with page 216 and included all of the amendments published in the advanced sheets **Amendments to** up to that page. The following are a continuation of these amendments, commencing with page 233 of the Acts.

Page 233, amending section 1646, in regard to applications for licenses to practice dentistry.

Page 234, section 3905, in regard to discrimination by transportation companies.

Page 240, section 1029, as to how adjudged insane, epileptic, feeble-minded or inebriate persons may test the legality of their detention.

Page 241, section 4930, providing how the execution of a sentence may be sustained, and section 1134, as to the registration fee, etc., of persons proposing to manufacture and sell agricultural lime.

Page 242, section 3388, providing that the clerk's offices of every court are to be kept open during convenient hours, except on Sunday, Thanksgiving and Christmas; and section 2767, in relation to the board of supervisors providing books, seals, etc., for clerks and treasurers.

Page 244, section 1471, in regard to the weight of a barrel of apples, and the size of barrels used for packing and shipping the same.

Page 247, section 1615, in regard to the admission for examination of all persons applying for certificate to practice medicine.

Page 265, section 2252, in regard to the number of commissioners of revenue in each county.

Page 267, section 759, in regard to loans by the State board for school houses.

Page 268, section 203, in regard to notice of a voter to the register of his precinct.

Page 269, section 3118, providing for the clerk of a civil justice court; and section 1923, relating to causing or encouraging children under eighteen years of age to commit misdemeanors.

Page 272, section 2002, as to the pay of the clerk of the board of supervisors.

Page 281, section 2702, providing that certain officers not to hold more than one office.

Page 283, section 2137, as to the examination of non-resident owners of automobiles in regard to registration, etc.

Page 304, section 4200, as to certain definitions as used in the Code in regard to insurance, guarantee and other companies.

Page 305, section 3857, how articles of association executed and acknowledged.

Page 309, section 155, how and when ballots are to be printed.

Page 313, section 3393, where writings, etc., are to be recorded,—a very important act which should be carefully read by those who have deeds, mortgages or contracts to be recorded.

Page 314, section 4988, as to trial justices in counties having population in excess of three hundred persons per square mile.

Page 316, section 2385, redress against erroneous assessment of taxes.

Page 318, section 4154, power and limitation of building and loan associations.

Page 319, section 2543, in regard to fines.

Page 339, section 6452, lien on crops for advances to farmers.

Page 340, section 4549, in regard to publishing, selling, etc., obscene books, motion pictures, etc.

Page 341, section 2389, redress against erroneous assessment of levies and local taxes; and section 5412, as to furnishing books to the commissioner of accounts.

Page 342, section 2854, in regard to the court house, clerk's office and jail of the various counties and citizens.

Page 349, sections 2430 and 2431, relating to the compensation of treasurers.

Page 359, section 2052, as to ferry across Corotoman River; and sections 2591 and 2601, relating to the settlement of the public debt and the sinking fund commissioners.

Page 363, section 340, as to duties of the first clerk and of the auditors and treasurers of the state.

Page 370, section 885, red cedar trees declared public nuisance.

Page 376, section 1004, and other sections of the Code relating to the insane, epileptic, feeble-minded and inebriate.

Page 387, section 200, as to pay of Judges, etc., of electoral boards.

Page 393, section 582, as to works of art bought or given to the State.

Page 394, section 5019, as to when the term of confinement of criminals is to commence and what credit is to be allowed for the time spent in jail.

Page 396, section 306, as to the duties of the clerk of the House of Delegates.

Page 398, section 5189, as to reservation of title to and liens on goods and chattels sold, to be void as to creditors and purchasers for value, unless in writing and docketed.

Page 402, section 2252, relating to commissioners of the revenue; and section 3194, relating to inspection of dams and rivers.

Page 408, section 3173, as to the restriction on the right to set certain nets.

Page 409, section 3330, non-resident hunting licenses.

Page 410, section 3716, as to the powers of the State Corporation Commission; and section 136, as to filling vacancies in certain offices.

Page 411, section 3885, relating to railway crossings.

Page 416, section 6348, as to petitions for an appeal and as to when appeal is allowed and supersedeas awarded, and repealing section 6349 of the Code.

Page 420, section 3210, as to penalty for violating preceding sections.

Page 421, section 6239, presumption of death from absence.

Page 483, section 3027, providing for the appointment of matrons for jails in cities containing forty thousand inhabitants, or more.

Page 485, section 6437, as to how builders' and supply liens shall be enforced.

Page 486, section 4497, as to acceptance by any officer of gift or gratuity, or promise to make a gift, etc.; how punished. Candidates for office should read this section very carefully; and section 4740 of the Code is repealed.

Page 489, section 3780, relating to the amendment of charters of corporations after organization.

Page 492, sections 853 and 926 to 930, inclusive, in regard to the payment of certain obligations of the State to public institutions.

Page 493, section 3434, salary of the Secretary of the Commonwealth.

Page 494, section 626, as to the salaries of division superintendents, and repealing sections 604, 605 and 606.

Page 500, section 3437, as to payment of the State treasurer, etc.

Page 503, section 5106, as to suits for divorce. It will be noted that a duly certified copy of the marriage license, with certificate of time and place of marriage, if the same took place in this State, must be filed with the bill, except where it is alleged that such certified copy cannot be obtained; and section 2073, as to the working of convicts.

Page 507, sections 4909, 4910, 4912, and 4913, inclusive, and section 1045, in relation to persons charged with crime and whose sanity is doubted.

Page 510, section 6310, how money under control of court deposited, record kept, list furnished auditor and examiner of records, etc.

Page 514, section 5333, adoption of minor children by adult persons.

Page 529, section 3510, as to fees of jailors for feeding prisoners.

Page 530, sections 2337 and 2349, as to duty of commissioners of revenue.

Page 531, section 3465, pay of the clerks of the supreme court of appeals at Wytheville and Staunton; and sections 1257, 1258, 1260, 1261, 1264 and 1265, definition of commission merchant and laws and regulations relating to the same.

Page 545, section 2769, in regard to the compensation of supervisors.

Page 547, sections 848, 1215, 1216 and 1217 defining ice cream and milk.

Page 551, section 4148, as to powers of trust companies.

Page 554, sections 2942, 2943, 2944 and 2945 as to the city or town manager plan.

Page 556, section 5431, as to what securities fiduciaries may invest.

Page 560, sections 645 and 658, in regard to expenses of school trustees; and section 3107, in regard to claims before civil and police justice.

Page 562, section 2039, as to board of supervisors' power to appoint road supervisors for magisterial districts.

Page 563, section 2307, by whom property is to be listed and to whom taxed.

Page 565, section 3847, in regard to foreign corporations doing business in this State.

Page 566, section 2039 is again amended in regard to road supervisors of magisterial districts.

Page 568, section 2806, in regard to pay of overseers of the poor; and section 3855, as to co-operative associations.

Page 572, sections 5898 and 3049 as to temporary appointment of circuit judges.

Page 573, section 3172, regulating size of fish that may be caught.

Page 574, sections 3594 and 1359, in regard to grain ground at mills, amount of toll, etc.

Page 586, section 4410, admitting evidence respecting general reputation of prosecutrix for chastity, in prosecution for seduction; and section 5208, deeds of corporations.

Page 587, sections 740 and 2721, as to school taxes in counties, cities and towns when the amendment to section 136 of the Constitution of Virginia has been ratified.

Page 591, sections 1362 to 1365, inclusive, as to tobacco warehouse sales.

Page 592, section 2110, as to the issuing of bonds for the construction of public roads.

Page 594, section 3846, requiring the Secretary of Commonwealth to mail process to corporations.

Page 595, section 5412, in regard to furnishing books to commissioner of accounts; and sections 5986 and 5988, as to appointment of jury commissioners, etc.

Page 597, section 4853, as to grand juries; and section 4676, as to keeping gaming tables, etc.

Page 598, sections 3665, 3666, 3667, 3673 and 3674, as to harbor commissioner for Norfolk, etc.

Page 600, section 659, as to duty of district school board as to school laws, government, etc.; and sections 5887, and 5888, establishing judicial circuits.

Page 607, section 5911, providing for the jurisdiction of circuit courts in cities which have since the present constitution went into effect undergone transition from cities of the second class to the first class; and sections 1738, 1743, 1749, 1750, 1771, 1774 and 1781, in regard to the condemnation of lands for a drainage district, etc.

Page 614, sections 526, 530, 540, 541 and 542, and adding to the Code three new sections to be numbered 546a, 546b, and 546c, in regard to forest reservation; forest wardens, etc.

Page 617, section 3082, as to city borrowing money.

Page 618, section 4248, punishment for fraudulent procurement of policy; and section 3918, when reduction in rates or free carriage may be given.